

15 CV 1481 (ENV)(LB)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BRIAN BURKE,

Plaintiff,

-against-

NEW YORK CITY TRANSIT AUTHORITY, *et al.*,

Defendants.

**NYCT DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR RECONSIDERATION**

JAMES B. HENLY
Vice-President and General Counsel
New York City Transit Authority
Attorney for MTA Defendants
130 Livingston Street, Room 1209
Brooklyn, New York 11201

Of Counsel:
Daniel Chiu

Tel: 718-694-3686

ARGUMENT

**THE COURT DID NOT OVERLOOK ANY
FACTS OR CASE LAW IN ITS
MEMORANDUM AND ORDER.**

“Motions for reconsideration are governed by Local Rule 6.3 and are committed to the sound discretion of the district court.” Liberty Media Corp. v. Vivendi Universal, S.A., 861 F.Supp.2d 262, 265 (S.D.N.Y. 2012). The standard for granting a “motion for reconsideration is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked.” Analytical Surveys, Inc. v. Tonga Partners, L.P., 684 F.3d 36, 52 (2d Cir. 2012). Moreover, a motion for reconsideration cannot be used as “a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking ‘a second bite at the apple.’” Id.

Plaintiff’s motion for reconsideration does not offer any cases or facts that were overlooked by the Court. Instead, plaintiff’s motion suffers from the same defects in his original complaint, amended complaint, and opposition to defendants’ motion to dismiss; it is replete with conclusory statements without any causal link between the complained of acts and any evidence of discriminatory or retaliatory animus. Plaintiff’s motion does not cite any case law or facts that the Court overlooked in its original decision. Plaintiff’s motion should therefore be denied.

CONCLUSION

For the foregoing reasons, the NYCT Defendants respectfully request that the Court issue an order denying plaintiff's motion for reconsideration together with such other and further relief as the Court deems just and proper.

Dated: Brooklyn, New York
October 26, 2016

JAMES B. HENLY
Vice-President and General Counsel
NEW YORK CITY TRANSIT AUTHORITY
Attorney for the NYCT Defendants
130 Livingston Street, Room 1209
Brooklyn, New York 11201
718-694-3686

By: _____


Daniel Chiu

CERTIFICATION OF SERVICE

I, Daniel Chiu, hereby certify that:

On October 26, 2016, I served the annexed NYCT Defendants' Memorandum of Law in Opposition to Plaintiff's Motion for Reconsideration by depositing a true and correct copy, into the custody of United States Postal Service, in an enclosed envelope with sufficient postage for first-class mail addressed to:

BRIAN BURKE, *pro se*
145 East 23rd Street, Apt. 4R
New York, New York 10010

I certify under penalty of perjury that the foregoing is true and correct.

Dated: Brooklyn, New York
October 26, 2016



Daniel Chiu